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Employment and Training Administration

**20 CFR Part 602
Federal-State Unemployment
Compensation Program; Unemployment
Insurance Quality Control Program; Final
Rule**

DEPARTMENT OF LABOR**Employment and Training
Administration****20 CFR Part 602****Federal-State Unemployment
Compensation Program;
Unemployment Insurance Quality
Control Program****AGENCY:** Employment and Training
Administration, Labor.**ACTION:** Final rule.

SUMMARY: The Secretary of Labor is issuing the final regulation to establish a permanent Quality Control program for the Federal-State unemployment insurance system. The Quality Control program will be a major tool to assess the timeliness and accuracy of State administration of unemployment insurance in order to improve program performance and revenue collection, and to reduce inaccurate benefit payments and claims denials, administrative errors, and abuse in the unemployment insurance system.

EFFECTIVE DATE: October 5, 1987.**FOR FURTHER INFORMATION CONTACT:**

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SUPPLEMENTARY INFORMATION:**Background**

Recent reviews of benefit payments and revenue collections indicate potentially serious problems in the Federal-State Unemployment Insurance (UI) system. The Random Audit program, which evaluated benefit payments in 46 States, found a percentage of errors in making payments which needs to be reduced. In addition, audits of benefits payment control, tax accounting and cash management activities indicated the need for improvement in all of these functions. To address these needs, a Quality Control (QC) program will be initiated; QC will expand upon previous efforts, notably the Random Audit program, and provide the basis for diagnosing problems and taking corrective actions.

QC Will Be Mandatory

The QC program will be the principal means by which the Federal-State UI partners evaluate the administration of a State's UI law and achieve improvement in program operations. Its

design relies heavily on the experience of the Random Audit program, which was voluntary for the States. Given the importance of ensuring the accurate and timely payment of benefits to eligible UI claimants and the accurate and prompt collection of UI revenues, however, participation of the States in the QC program will be mandatory.

**Section-by-Section Regulatory
Highlights**

Subpart A, *General Provisions*, sets out the purpose and scope of the QC program, including the laws to which the regulation applies.

Subpart B, *Federal Requirements*, defines the authority under which these regulations are issued. It also explains the Secretary of Labor's (Secretary) interpretation of the authority allowing the Department of Labor (Department) to make the QC program mandatory.

The Department does not believe that a mandatory QC program will require any State to amend its law to fulfill the methods of administration requirement in section 303(a)(1) of the Social Security Act (SSA) (42 U.S.C. 503(a)(1)) as the QC program is an expansion/enhancement of other Federal-State UI evaluation programs, such as Random Audit and Quality Appraisal, which have been operative in State agencies for some time. States are encouraged, however, to review their laws to ensure that an adequate legal basis exists for implementing QC.

Subpart C, *State Responsibilities*, contains requirements which ensure the objectivity of the State's QC unit and eliminates potential conflicts of interest. Subpart C also provides that:

(1) The State shall sample, investigate cases, and classify findings in accordance with standard procedures; use a questionnaire prescribed by the Department, in which the collection of demographic data will be limited to those related to eligibility and those necessary for validating the representativeness of samples; and

(2) The State shall conclude all findings of inaccuracy as detected through QC investigations with appropriate official actions; and

(3) The State shall inform claimants in writing that the information obtained from a QC investigation may affect their eligibility for benefits and inform employers in writing that the information obtained from QC investigation of revenues may affect their tax liability; and

(4) The State shall transmit data so obtained (without identifying individuals) and other required reports to the Department; and release the results of the QC program at the same

time each year in a format prescribed by the Department; and

(5) The Department may determine the QC program, or a portion of the program, is not necessary for the proper and efficient administration of a State law and, therefore, the State need not administer the entire QC program or designated portion of the QC program. However, it is not anticipated at this time that the section will result in exceptions in cases other than those in which the costs of operating a QC program might be deemed by the Department to be excessive in relating to the overall results obtained.

Subpart D, *Federal Responsibilities*, defines the management and oversight responsibilities that the Department has under these regulations. These responsibilities include establishing required methods and procedures, providing technical assistance, maintaining a computer data base, validating QC methodology, and reviewing QC operational procedures and samples.

Subpart E, *QC Grants to States*, provides that: (1) The Secretary has the authority to recapture QC granted funds expended which are not necessary for the proper and efficient administration of the QC program; and (2) after notice and a hearing, the Secretary may withhold all Title III grants from a State that fails to implement a QC program in accordance with Part 602. However, under Part 602, there is no sanction or incentive to influence achievement of any specific error rate, although errors revealed by the QC operation might result in questions being raised about methods of administration or other Federal requirements.

**Consultation for Development of the
Proposed Rule**

The Department published an Advance Notice of Proposed Rulemaking in the *Federal Register* on September 26, 1984, at 49 FR 38083, to inform interested persons of its intentions to establish a permanent QC program for the UI system. During the 30-day comment period, the Department received five letters with comments. Prior to and after the request for formal comments, the Department held numerous meetings with those involved in the UI system to solicit ideas and reactions to the proposed design of the QC system.

In June 1985, the Secretary of Labor decided to delay the planned July 1985 implementation of the QC program and directed the undertaking of a wide-ranging policy review. The purpose of the review was to explore fully and

formally the basic policy decisions forming the framework of the QC system and to ensure full participation of the many groups involved in UI administration.

The Secretary's review was announced in a notice published in the *Federal Register* on August 6, 1985, at 50 FR 31787 and a public meeting was announced to be held on August 21, 1985, at 50 FR 31792, inviting viewpoints, suggestions, and alternative approaches from Governors, employer groups, organized labor, and State Employment Security Administrators. Each group was asked to comment specifically on nine (9) design issues which were described in the *Federal Register* on August 6, 1985, at 50 FR 31787.

Listed below are decisions on the nine design issues which were reached after consideration of the 61 comments received.

1. *System Operations.* The QC system will provide mixed Federal/State division of responsibilities.

2. *Coverage.* QC will be mandatory for the States.

3. *Access to Data.* States will be required to release QC results annually using a standard format, retaining the option of release by States before any national release.

4. *Scope.* QC investigations will be conducted State-wide at Federally-established sample levels. Beyond the minimum sampling effort, States will be given the flexibility to examine subjects more closely through such choices as increased sample size, augmented sampling, or special studies.

5. *Investigative Objectives.* Case reviews of the QC sample claims will focus on both outcomes and process.

6. *Purpose.* The QC program will focus on correcting, not just measuring problems. Data to support operational corrections will be required and data to affect policy and legislative changes will be optional.

7. *Methodology.* QC will feature a prescribed minimum sample size specified for each State, standard definitions and methodology, and will offer flexibility for additional State-designed sampling and special studies (subject to Departmental approval).

8. *Error Correction Strategies.* The Department will encourage corrective action and foster it through technical assistance, but will not mandate corrective action.

9. *Programs Included.* QC will cover both paid and denied claims under all major regular benefit programs as well as revenue activities and it will be gradually extended to other programs such as Extended Benefits and Trade Readjustment Allowances.

In response to the Secretary's review of QC, representatives of several District of Columbia-based public interest groups including the Interstate Conference of Employment Security Agencies, Inc. (ICESA), the National Conference of State Legislatures, the National Federation of Independent Businesses, the Council of State Chambers of Commerce, UBA Inc. (United Benefit Advisor, Inc.), the U.S. Chamber of Commerce, and the American Federal of Labor-Congress of Industrial Organizations (AFL-CIO), suggested a series of QC principles. These consensus principles (described later under Major Themes) were adopted as policy by the Department and issued in Unemployment Insurance Program Letter (UIPL) No. 4-86, on December 20, 1985.

The proposed regulation was written to conform to the consensus principles plus the decisions on the design issues. Decisions which deal with procedural subjects are reflected in The Benefits Quality Control State Operations Handbook (Benefits QC Handbook) which the Department prepared and issued separately for comment.

Comments Received in Response to the Notice of Proposed Rulemaking

The proposed rule (new Part 602) to establish the QC program was published for comment in the *Federal Register* on July 25, 1986 at 51 FR 26846. On August 12, 1986, the Department extended the period for comments on the proposed rule until September 9, 1986, at 51 FR 28840.

The Department received timely comments from 33 organizations and individuals. An additional seven organizations submitted comments after the close of the comment period. The majority of comments were from State Employment Security Agencies (SESAs); comments were also received from other interested parties such as public interest groups. All comments received timely were given careful consideration in preparing the final regulation in this document.

Major Themes in the Comments

Three major themes were present in the comments: (1) questioning the Secretary's authority to mandate a QC program as a requirement under the Federal law; (2) a desire for more specificity in the regulation; and (3) the desire that the regulation reflect the consensus recommendations previously accepted by the Department which were submitted by ICESA on behalf of several District of Columbia-based public interest groups.

The first major area of concern, the Secretary's authority to mandate the program, is addressed in the section-by-section analysis that follows.

The request for specificity, the second major theme, reflected States' expressed desire to be protected from any undue exercise of Departmental discretion outside the regulatory process. Ten commenters expressed concern about the failure of the proposed regulation to specify all of the requirements of the QC program. After carefully considering these comments, the Department has concluded that the regulatory approach taken, that of issuing a broad and brief implementing regulation supported by detailed operating procedures in handbooks, is the most appropriate way of establishing the program. The regulation establishes and defines the program while the handbooks provide the necessary level of detail and flexibility needed to initiate and operate the QC program. This approach is considered appropriate because it allows for phasing in QC and making handbook changes based on early experience. It is also consistent with the Administration's desire to limit detailed regulations where possible. The Department committed itself to gathering the maximum possible public and State input before modifying and issuing the regulation in this document and the operations' handbooks. Although they will not be published in the *Federal Register*, handbooks containing detailed operating procedures have been and will continue to be broadly circulated for comment before being issued or modified by the Department.

In a related group of responses, thirteen commenters identified particular sections of the regulation that they believed did not provide sufficient specificity for the States (e.g., contents of the questionnaire, timing/contents of the annual release of data). The Department does not want to make these sections more specific because of the need for flexibility to make the QC program more comprehensive in succeeding years. These items will be part of the handbooks and will be circulated widely for comment before being issued or modified by the Department.

The third theme was that the consensus principles be included in the regulation. These principles were suggested by representatives of the previously listed District of Columbia-based public interest groups. They were outlined in an issuance from the Department that was sent to all interested parties (UIPL No. 4-86). Six

commenters requested that the consensus principles be incorporated in the body of the regulation. Another fourteen requested that certain specific principles be included.

Although the principles are already embodied in the operations handbooks and other implementing instructions, the Department agrees they should be specifically included in the regulation as well. The principles, with the sections of the regulation modified to embody them indicated in brackets, follow:

1. All States would perform "Core QC." That is, a minimum of 400 weeks claimed cases, per State per year, would be investigated to determine whether the payments were proper. [§ 602.21(b)] Only those data elements that relate to eligibility for UI benefits would be collected. [§ 602.21(c)(3)] [This principle was accepted in modified form by the Department to (1) substitute "cases of weeks paid" for "weeks claimed cases" and (2) include the collection of demographic data necessary to conduct proportions tests to validate the selection of representative samples.]

2. QC would be expanded to include the review/investigation of claims that had been denied and employer tax collection activities. In addition, other categories of UI payments (interstate benefits, combined wage claims, and Federal UI benefits) should eventually be included in the program. [§ 602.1]

3. States would not be required to furnish information to the Federal Government about individuals whose claims are audited unless that information were provided without revealing the identity of the individuals. [§ 602.21(f)] [This principle was accepted in modified form by the Department to specify that each State shall furnish information to the Department without, *in any manner*, identifying individuals to whom such data pertain.]

4. The collection of demographic data elements that do not relate to an individual's eligibility for UI benefits would not be a part of QC.

[§ 602.21(c)(3)] [This principle was accepted in modified form by the Department to include the collection of demographic data necessary to conduct proportions tests to validate the selection of representative samples.]

5. Obtaining information needed for QC by telephone rather than in face-to-face interviews would be tested on a limited basis. [§ 602.30(b)] [This principle was accepted in modified form by the Department to provide also for tests of collecting data by mail.]

6. A portion of additional resources would be used for analysis of data generated by QC, to increase the number of claims sampled in areas

where more information is needed, and for corrective action. [§ 602.40(b)] [This principle was accepted in modified form by the Department to specify that the Department *may* allocate additional resources, *if available*, to States for analysis of data generated by the QC program, to increase the number of claims sampled in areas where more information is needed, and for corrective action.]

7. No sanctions nor funding "incentives" would be used to force the achievement of specified error rates. [§ 602.43]

8. States would be required to release the results of the QC program at the same time each year, providing calendar year results using a standardized format to present the data. States would have the opportunity to release this information prior to any release at the national level. [§ 602.21(g)]

Section-by-Section Analysis of Comments

Subpart A—General Provisions

Section 602.1 Purpose.

Section 602.2 Scope.

Eleven commenters said that the inclusion of Denials and/or Revenue in the QC regulation is inappropriate or premature at this time. While it is true that only Core QC, which assesses the benefit payment operations by investigating paid claims, has been designed and tested thus far, the Department wrote the regulation broadly to provide authority for what is planned as a comprehensive QC program. Also, by its acceptance of consensus principle number two, the Department is committed to expand the QC program to include the investigation of claims that have been denied and employer revenue collection activities (Revenue QC), which would include any other UI revenues, such as payments in lieu of contributions and reimbursements from the Extended Unemployment Compensation Account (EUCOA). The methodologies will be developed in conjunction with SESAs and tested through State-operated pilot programs to ensure that they are effective mechanisms for State use.

One commenter stated that the "Purpose" section is too narrow in its explanation of the QC program: The first sentence is nebulous and open to interpretation, and the last sentence should be excluded. The "Purpose" section has been expanded to explain that QC will be a major tool to assess the timeliness and accuracy of State administration of the UI program. Additionally, the last sentence of the

paragraph has been revised to clarify that the reference to "collections" does refer to revenue collections which includes any other UI revenues such as payments in lieu of contributions and EUCA reimbursements.

Two commenters proposed that States be allowed the option to participate in whichever components of the QC program (benefits, denials, or revenue) they believe that they need. While States may have ideas of which areas of their programs require attention, the Random Audit experience demonstrated to the Department the value of such a program nationwide.

Subpart B—Federal Requirements

Section 602.10 Federal law requirements.

Section 602.11 Secretary's interpretation.

Five commenters questioned the authority of the Secretary to mandate a QC program. One commenter said that requiring a State to operate a QC program goes far beyond the intent of section 303(a)(6) of the SSA, which gives the Secretary authority to require reports. Legal authority to establish QC derives from both sections 303(a)(1) and 303(a)(6) of the SSA. As described in the regulation, the Secretary interprets these sections to authorize QC among the "methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due," as well as authorizing the Secretary to require verifiable reports of its QC implementation and operations. The methods of administration requirement (section 303(a)(1), SSA) has from the beginning of the program been interpreted as pertaining to all UI operations, including revenue and benefit operations.

One commenter suggested that QC would be more successful and States would be more cooperative if it were voluntary, as was Random Audit. Observations of QC as operated since March 30, 1986 and its predecessor, Random Audit, both of which were voluntary, have revealed less than adequate adherence by several States to methodology necessary to ensure valid results.

Another commenter suggested that § 602.11(a), which says in the proposed rule, "the Secretary interprets section 303(a)(1), SSA, to require that a State law [provide for] such methods of administration . . . and collection [and handling] of unemployment revenues [and reimbursements], with the greatest

accuracy feasible" is sufficient, and that § 602.11(d) requiring a State law authorizing QC is unnecessary. Section 602.11(d) has been improperly interpreted by this commenter. Section 602.11 sets forth the Secretary of Labor's basic interpretations of sections 303(a)(1) and 303(a)(6) as they relate to the QC program. As stated earlier in the Section-by-Section Regulatory Highlights, the Secretary has no reason to believe that a mandatory QC program will require any State to amend its law. Section 602.11(d) is included to insure that States interpret their existing law to require the establishment of a QC program. Without § 602.11(d), a State might construe their methods of administration requirement to be sufficient without the establishment of a QC program.

To clarify that QC involves both conformity and compliance, additions were made to both §§ 602.10(d) and 602.11. An additional sentence in § 602.11(c) states, "Further, conformity of the State law with those requirements is required by section 303(a) and section 601.5 of this chapter."

Subpart C—State Responsibilities

Nine commenters stated that corrective action should be funded and/or required by the Federal government and that technical assistance should be made available to help correct the errors detected by QC. Concerning funding of corrective actions, State initiatives in response to Random Audit data and to QC data collected on a voluntary basis have demonstrated that many corrective actions can be taken with existing resources as part of ongoing management oversight. Should it develop that necessary actions nationwide cannot be supported with available resources, the Department will use the information from QC findings in budget development to seek funding for such necessary corrective actions. However, such data is expected to be available only after QC has operated for some time in each State. The regulation was modified by the addition of § 602.40(b) to authorize the Department to allocate additional resources, if available, for corrective action, as called for in consensus principle number six.

The Department finds no need to impose an explicit requirement that SESAs implement corrective action. It believes that SESAs want to operate the best possible UI program and also have a strong incentive to improve their operations and lower taxes for the benefit of their own States' employers whose taxes finance UI. Rather than promulgating such a requirement, the Department is committed to providing

technical assistance to the States to help correct errors detected by QC. To this end, the Department funded an analyst position in each State so that SESAs may develop additional expertise to help determine where their problems lie.

Section 602.20 Organization.

Two commenters opposed direction by the Department of the States' organizational structure. The limits imposed by the regulation are intended to protect the integrity of the program while preserving the States' prerogatives. The SESA is free to locate the QC unit wherever it wishes so long as it is independent of, and not accountable to, any unit performing functions the QC unit evaluates. The Department allows the SESA full flexibility to locate the unit within this constraint.

One commenter questioned the wisdom of prohibiting the QC unit from being within the UI Division, reportable to the UI Director, or under the authority of the State Commissioner of Labor. This is an apparent misinterpretation of the requirements intended to ensure independence from operational units being evaluated. The regulation would prohibit the QC unit from reporting to a manager whose sole or predominant responsibility is to manage an area, e.g. benefit payment operations, being evaluated. Depending upon the organizational structure of the State, therefore, the QC unit could report to the State Commissioner of Labor, the SESA Administrator, or the UI Director.

Section 602.21 Standard methods and procedures.

Section 602.21 has been renamed to more aptly describe the subjects included and reorganized to achieve a more logical order. Following is a table showing the new section title and topics covered in each subsection compared to the location of the same material in the proposed rule.

Final rule	Proposed rule
602.21 Standard methods and procedures.	602.21 Sampling, study methodology, recordkeeping, and reporting.
602.21(a) [In reference to using standard methods and procedures established by the Department].	602.21(b).
602.21(b) [In reference to representative sample minimums set by the Department].	602.21(a)(1).
602.21(c) [In reference to prompt and in-depth case investigations].	602.21(a)(2).
602.21(c)(1) [In reference to informing claimants/employers of effect of QC].	602.21(d).
602.21(c)(2) [In reference to the use of the questionnaire being required].	602.21(e).

Final rule	Proposed rule
602.21(c)(3) [In reference to collecting data required by the Department].	602.21(b).
602.21(c)(4) [In reference to taking official actions on inaccuracies detected through QC investigations].	602.21(c).
602.21(d)(1) [In reference to classifying benefit payment case findings].	602.21(a)(4).
602.21(d)(2) [In reference to classifying denial case findings].	602.21(a)(3).
602.21(e) [In reference to making and maintaining records].	602.21(a)(5).
602.21(f) [In reference to furnishing information and reports].	602.21(a)(6).
602.21(g) [In reference to releasing the results of the QC program].	602.21(a)(7).

One commenter contended that QC is not cost effective because of high unit cost, that sampling should be reduced from 12 months to one month, and that QC should be incorporated into the UI Quality Appraisal system (the existing system used to assess performance in UI benefits, appeals, and revenue collections). The Department recognizes the expense of operating a QC program, but the investment in QC, when compared to the overall administrative costs of the UI program (less than two percent) and to benefit outlays (two tenths of one percent), is very worthwhile. Studies of alternative investigative methods have been and will continue to be undertaken in order to identify the most cost-effective procedures. Despite the costs of the QC program, it is expected to realize savings that would more than offset costs. The QC and Quality Appraisal programs have been examined, and duplications have already been eliminated. Ultimately the two assessment systems will be merged into a single system which preserves Quality Appraisal's useful features.

Section 602.21(a) [In reference to using standard methods and procedures established by the Department].

Ten commenters objected to the inflexibility of the prescribed methodology and the absence of alternative methodology. Consensus principle number five on this subject states that the Department will test collecting information by telephone rather than in face-to-face interviews, and this language, modified to provide also for tests of collecting data by mail, has been added to the regulation at § 602.30(b). Furthermore, in keeping with the commitment to test alternative methodologies, the Department has approved and supported one SESA's proposal for such a test. Other SESAs

proposals for conducting their own tests are also welcomed.

Two commenters stated that the required methods and procedures should be established only after consultation and should be specified in the regulation. The methods and procedures are not specified in the regulation due to the nature of the regulatory approach taken with the QC program. The Department has sought and used input from SESAs in the development of QC methodology and will continue to do so. State comments on two draft versions of the benefits QC State Operations Handbook (Benefits QC Handbook) have led to several modifications in the methodology. Future revisions to the Benefits QC Handbook also will be circulated for comment before being issued. After agreeing to the consensus principles, the Department made additional changes to the methodology.

Section 602.21(b) [In reference to representative sample minimums set by DOL].

Five commenters were concerned that the regulation does not specify minimum sample sizes but gives the Department the authority to establish minimum sample sizes outside the regulatory process. Two expressed the opinion that States should have input on the number of cases sampled to reflect State-specific factors affecting the time it takes to complete an investigation. Two others proposed that States should be allowed to reduce the sample pull below existing Benefits QC Handbook limits if necessary due to illnesses, vacancies, leave, etc. In contrast, another commenter believed that the sample sizes will be too small to make valid estimates.

The Department concurs in consensus principle number one that each State sample a minimum of 400 cases and has amended the regulation to incorporate that principle. The principle, as incorporated, has been modified for technical accuracy. The term "cases of weeks paid", which are covered in Core QC, has been substituted for the suggested language of "weeks claimed cases" as contained in the consensus principles.

The Department believes that 400 cases per year is the minimum needed to enable sufficiently precise QC inferences to be made for each State. It has further specified in the Benefits QC Handbook, minimum weekly sample sizes—which do allow States some flexibility to adjust to staffing constraints—to ensure that the QC samples are large enough to permit valid

inferences to be made from the data obtained each quarter. Samples below these minimums run the risk of significantly reducing the usefulness and reliability of data from an entire quarter.

Two commenters suggested that special studies should largely be at State discretion, with no mandatory application to the national data perspective. SESAs have discretion to determine what should be studied; however, the Department must reserve the right to review State proposals to ensure that they are technically valid and consistent with QC objectives.

Another commenter suggested that nonscientific, ad hoc studies are inexpensive and useful and should be included. The Department recognizes that nonscientific, ad hoc studies have been performed for years by SESAs. Such studies are encouraged so long as the minimum requirements for QC are met.

Section 602.21(c) [In reference to completing prompt and in-depth case investigations to determine degree of accuracy and timeliness].

Two commenters objected to the addition to the regulation of timeliness as a subject of assessment without first consulting the States. Reference to timeliness in this section refers not to QC case completion, but to more general UI applications such as claim payment timeliness. This language has been included to permit future applications of the QC program beyond those in the existing design of the QC case investigations, e.g., utilization of capabilities built into the QC system to eliminate the need for periodic reports which provide data from which first payment time lapse is measured.

Section 602.21(c)(1) [In reference to informing claimants and employers in writing of the effect of QC investigations].

Section 602.21(c)(1) was clarified to explain that States must inform claimants in writing that the information obtained from a QC investigation may affect their eligibility for benefits. Each State must also inform employers in writing that the information obtained from a QC investigation of revenue may affect their tax liability.

Section 602.21(c)(2) [In reference to the use of the questionnaire being required].

Eleven commenters objected to the language that States must require claimants to complete a questionnaire, contending that the Department/SESAs do not have the legal authority or that it is a post facto eligibility determination.

The Department's legal authority to establish the QC program encompasses the use of the questionnaire. A standard questionnaire is necessary in order to ensure the reliability of data collected. Each State will apply its own law for claimant eligibility requirements to obtain claimant participation in answering the questionnaire, and the regulation has been revised to clarify that requirement. Information obtained from QC is no different than that obtained from any other source having the potential to affect claimant eligibility. The establishment of a QC program would not affect the SESA's authority to undertake redeterminations or necessitate any change in State finality laws. The language in the regulation in § 602.11(d) has been modified to emphasize this position.

Three commenters were concerned about the absence of any specific information in the regulation about the contents of the required questionnaire. In light of the regulatory approach taken in the QC program, it would be inappropriate to include this level of specificity in the regulation. The questionnaire is included as an appendix to the Benefits QC Handbook and was developed and revised with State input.

Two commenters contended that it is not feasible to require a questionnaire because claimants cannot always be located. The Benefits QC Handbook acknowledges that it is not possible to complete all questionnaires and has provided for the investigator to document attempts to interview the claimant. In situations where the claimant cannot be located, the investigator must investigate the claim using the information that can be obtained from agency records.

Section 602.21(c)(3) [In reference to collecting data required by the Department].

Eleven commenters stated that the collection of demographic data beyond that necessary for determination of eligibility is inappropriate or should be optional for the States. The Department accepts this position, which is also contained in consensus principles number one and four, and has revised the regulation to so state and identify the demographic data that are necessary to conduct proportions tests for the purpose of validating the selection of representative samples. Claimants' date of birth, sex, and ethnic classification.

Section 602.21(c)(4) [In reference to concluding all findings of inaccuracy as detected through QC investigations with appropriate official actions].

The language in this section has been revised to more accurately set forth the requirement that appropriate official actions be taken when inaccuracies are detected through QC investigations. The term "determination" used in the proposed rule is too narrow in definition as an inaccuracy may be properly concluded with some other appropriate action. Moreover, State finality laws may preclude action.

Section 602.21(d)(1) and (2) [In reference to classifying QC case findings].

One commenter stated that there is too much detail regarding the classification of cases, which should more appropriately be located in the Benefits QC Handbook. In contrast, another commenter suggested that the regulation should define "error." The Department believes that a proper balance between the regulation and the operational handbooks will be maintained by the regulation setting forth the major classification of case findings (e.g., proper payments, overpayments, underpayments, or proper denials) while the handbooks prescribe the detailed categories and definitions of error.

Section 602.21(f) [In reference to furnishing information and reports].

Two commenters were concerned that the regulation does not make clear what data are to be transmitted, why they are to be transmitted weekly, or how they are to be used. They believe that the statement "for statistical and other analysis" is too general and does not support State integrity. In keeping with the broad regulatory approach described earlier, the Department does not believe it should specify in the regulation which QC data are to be collected and transmitted; such detail is contained in the Benefits QC Handbook. However, the Department has modified the regulation at § 602.30 to identify examples of how the data are to be used. Section 602.30 was amended to state that a QC data base will be combined with other data for statistical and other analyses such as assessing the impact of economic cycles, funding levels, and workload levels on program accuracy and timeliness.

Five commenters stated that weekly transmission of data was inappropriate. The Department finds that weekly transmission is desirable because Federal oversight responsibility involves

ensuring that cases are sampled properly and completed in a timely manner to ensure reliability of data. Prompt entry and transmission of QC data are necessary to enable the Department to conduct proportions tests at frequent intervals in order to minimize the possibility that large blocks of data might be invalidated.

Seven commenters perceived a need to ensure privacy of claimant's Social Security numbers. Based on these comments, the Department's desire to incorporate consensus principle number three, and compliance with the Privacy Act of 1974 (5 U.S.C. 552(a)), the Department has modified the regulation. Containing even more restrictive language than presented in consensus principle number three, the regulation now specifies that States will be required to furnish information and reports to the Department of Labor, including weekly transmissions of case data entered into the automatic QC system and annual reports, without, in any way, identifying individuals to whom such data pertain. The States are being provided with software which will ensure that identifiers for all data transmitted from States will be encrypted so that individual claimants cannot be identified from information furnished to the Department. The Department does not maintain any records or establish any identifiers on individual persons under the QC program; therefore, no system of records is being established which would be subject to the Privacy Act.

Section 602.21(g) [In reference to releasing results of the QC program].

Five commenters requested that the timing/format of the annual release of QC data be specified in regulation. Four additional commenters requested that the release of QC data to the public should be controlled by the States.

Two others believed that publication of QC results by the Department in a standardized format may lead to unfair and unrealistic comparisons between States. Nine commenters stated that flexibility on release of information was necessary. One commenter said that the annual release of data should include full disclosure of the States' work search requirements, while another saw a need to differentiate between "correctable" and "non-correctable" improper payments. Two commenters stated that QC results should be published at the national level only as a composite-of-performance rate of all States, and that individual State data should be released by the Department only if a State fails to release its own data within 90 days of a composite release.

In response to these varied comments, the Department has agreed to consensus principle number eight that States will release calendar year results of the QC program at the same time each year, using a standardized format to present the data. States will have the opportunity to release this information prior to any release at the national level. This language has been added to the regulation. Specific formats and procedures will be promulgated through the Benefits QC Handbook, rather than in regulation, consistent with the regulatory approach previously described. The Department is committed to ensuring that significant concerns on the subject continue to be identified and addressed. Although there are no general plans to publish handbook sections in the *Federal Register*, proposals related to releasing the QC data will use this mechanism to ensure that all interested parties have the opportunity to comment.

Section 602.22 Exceptions.

One commenter suggested that the final rule should stipulate that States can petition the Department for exclusion from QC. As stated in the background statement of the proposed regulation, published at 51 FR 26846 on July 25, 1986, and repeated in the section titled QC Will Be Mandatory above, "Given the importance of ensuring accurate and timely payment of benefits to eligible UI claimants and accurate and prompt collection of UI contributions, however, participation of the States in the QC program will be mandatory." At this time it is anticipated that the only jurisdiction that may be excepted from Core QC would be the Virgin Islands. The Department has determined, therefore, that a procedure for requesting exemptions is not necessary. However, the regulation has been revised to clarify that cost effectiveness will be considered in excepting States from participation in QC. Moreover, any exceptions will be discussed with the individual State in advance of any final decision.

Subpart D—Federal Responsibilities

Section 602.30(a) [In reference to the establishment of methods and procedures].

Two commenters stated that the required methods and procedures should be established only after consultation with the States and should be specified in the regulation. Response to this comment is included in the earlier discussion of § 602.21(a) [In

reference to using standard methods and procedures established by the Department).

Section 602.30(b) [In reference to alternative methodologies].

In response to the ten commenters objecting to the inflexibility of the prescribed methodology and the absence of alternative methodology, the Department has added a section to the regulation concerning consensus principle number five, alternative methodologies. Complete response to this comment is found in the earlier discussion of § 602.21(a) [In reference to using standard methods and procedures established by the Department].

Section 602.30(c) [In reference to the Department maintaining a computerized data base].

Four commenters were concerned about the need, cost, and security of Federal data bases and of access to State data bases. The need for a Federal data base and its uses are addressed in § 602.21(f) above. Prior to the transmission of case data, States will encrypt each claimant's social security number, thereby preventing identification of any individual's record. This should ensure the maintenance of privacy in the data base. While the Department recognizes the cost of maintaining a Federal data base, its use and potential savings outweigh the expense. More discussion of QC cost benefit is found in § 602.21 above.

SESAs are presumed to have established appropriate security and password procedures to prohibit unauthorized access to either the SESA mainframe or the QC microcomputers. There will be no mandatory access by the Department to any data in the SESA mainframe in the operation of the QC program under this part, although access to such data may be required in connection with audits conducted under State or Federal authority.

Section 602.31 Oversight.

Two commenters stated that the Department should have the responsibility to establish uniform, standard methods and procedures, but monitoring of the State operational procedures should be limited to ensuring only that States meet conformity and compliance requirements. The QC program is based on the Secretary's interpretations of section 303 of the SSA, which contains the "methods of administration" requirement. All departures from these requirements pose a potential conformity/compliance issue.

Subpart E—Grants to States

Section 602.40 Funding.

Three commenters stated that the regulation should ensure, and the Department should provide, sufficient funds in order for States to meet the Federal QC requirements. This would not be appropriate subject matter for regulation, because the Department is dependent upon Congress for appropriation levels and cannot guarantee, in regulation, specified funding. Furthermore, it should not be necessary for any State to use State resources for implementing and maintaining a QC program, as adequate resources have been provided for such purpose.

One commenter requested that the regulation should stipulate that State revenues not be used for QC. To prohibit States from using State revenues for QC could be counterproductive. The Department would not want to discourage States from taking the initiative to expand QC to meet their own needs.

In response to the six commenters wishing the consensus principles to be explicitly incorporated in the regulation, the Department has added § 602.40(b). This new section, embodying a slightly modified version of consensus principle number six, states that the Department may allocate additional resources, if available, to States for analysis of data generated by the QC program, to increase the number of claims sampled in areas where more information is needed, for pilot studies for the purpose of expanding the QC program, and for corrective action. The revision to the exact language of consensus principle number six acknowledges that allocations can only be made if funds are available and provides some Departmental discretion in making the allocation.

Section 602.41 Proper expenditure of QC granted funds.

One commenter pointed out that subjecting QC funds to recapture seems inconsistent with the Administrative Financing Initiative (AFI). There is no inconsistency between financing and proper expenditure requirements with respect to QC and the four short-term changes made thus far under the Department's AFI which was published in the Federal Register at 51 FR 18052. Should future changes in administrative financing pose any issue, a reconciliation will be effected.

Sections 303(a)(8) and (9), SSA, require that State laws include provisions for:

... the expenditure of all moneys received pursuant to section 302 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law; and

... The replacement, within a reasonable time, of any moneys received pursuant to section 302 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of such state law.

These provisions authorize the Department to take exception to and require reimbursement for any expenditure made which is not in compliance with requirements placed on States for the operation of QC. This reference is set forth in the regulation to notify States that an interim step will be taken before proceeding with any action to withhold all grants.

Another commenter observed that effective review of the use of QC granted funds will be difficult unless they are identified as a separately budgeted item. SESAs will be responsible for operating the QC program in accordance with the QC requirements. The Department will be responsible for ensuring that SESA program performance is adequate. It will only be necessary for the Department to review SESA use of grant funds if program performance is inadequate.

Section 602.42 Effect of failure to implement a Quality Control program.

Twelve commenters questioned the authority of the Secretary to withhold grants for failure to implement QC in accordance with Federal requirements. The Social Security Act makes the Secretary responsible for ensuring that SESAs adopt such methods of administration as will ensure full payment of unemployment compensation when due, and makes provision for grants withdrawal to ensure conformity/compliance. The Random Audit experience has revealed the existence of problems in the payment of benefits and has demonstrated that this approach is feasible for estimating the extent of improper payments. The Secretary has determined that implementation of QC will be the most efficient means of fulfilling these responsibilities.

It is the intent of the Department to ensure that an effective QC program is implemented by providing adequate funding and offering technical assistance to SESAs as needed. Consistent with other aspects of UI administration, withdrawal of grants would be a last resort.

Four commenters were concerned that conformity/compliance issues could be raised for failure to run the QC program within the strict guidelines of the QC methodology. They suggested that the regulation should clarify that administrative funding would not be withheld unless a State "refuses" to participate in QC. It was further suggested that the Department should give States quarterly written assurance that their QC program is in compliance with Federal rules, and if deficiencies are found by the Department, they should be specifically defined for corrective action.

The language from the proposed regulation is being maintained to be consistent with that of section 303(a)(1) SSA, and the Secretary's interpretation as set out in the regulation. Failure to comply substantially with QC methodology could result in proceeding under section 303(b), SSA. However, the intent of the regulation is not to withhold administrative funding for technical deficiencies beyond the SESA's control. The Department will be conducting routine compliance monitoring of the State QC programs and providing regular feedback to the States. If problems are found, it will be in the interest of all parties involved to resolve them. As with all such matters, the Department will work cooperatively with a State before taking any formal conformity/compliance action. The regulation states that "the Department of Labor shall, for purposes of determining eligibility for grants . . . annually review the adequacy of the administration of a State's QC program." This is deemed sufficiently frequent for official notification to the SESAs.

One commenter proposed that definition of the word "implementation" was necessary. For purposes of this regulation, implementation refers to the act of establishing a QC program in accordance with the regulation and the prescribed methodology in the QC operations' handbooks. (Thus far only the Benefits QC Handbook has been written and issued.) Further definition does not appear appropriate or necessary.

Section 602.43 No incentives or sanctions based on specific error rates.

Two commenters said that the regulation should state that no sanctions or funding incentives will be used to force achievement of specified error rates. This position also was stated in consensus principle number seven. The Department has revised the regulation, substituting the word "influence" for "force", to incorporate this principle.

Appendix A—Standard for Claims Determinations—Separation Information

Three commenters asserted that Appendix A is not needed and should be deleted from the regulation. The appendix is intended to support the QC requirement that appropriate action resulting from QC investigations be issued officially. This ensures that findings are subject to the same possible challenges by claimants as other agency actions. The inclusion of Appendix A in the regulation is mandated by the Office of the Federal Register's rule on incorporation by reference.

Another commenter was concerned that Appendix A changes procedural instructions, which if not followed could result in sanctions. Procedural instructions are not affected by inclusion of Appendix A, which is presently contained in the Employment Security Manual, and is a requirement independent of the QC regulation.

Other Comments Which Are Not Section Specific

Eleven commenters contended that the problem with UI is that it is systematically underfunded. Furthermore, they contend that if the requirements of Gramm-Rudman legislation are implemented, it is implicit that the QC program will be fully funded, while funding for the payment of benefits and collection of revenues will be reduced. This would result in QC having a higher priority than the operation of the basic UI program. The Department believes that QC is essential at any time, regardless of budget constraints. Moreover, QC could reveal the impact of such variables as budget and workload fluctuations. Such information would be invaluable in future budget discussions.

One commenter believed that the QC rule represents a potential for substantial interference in State UI administrative processes and objected to the potential use of QC to enforce non-statutory Federal work-search standards upon States without making those standards explicit. The Department does not intend to impose or enforce non-statutory work-search standards. The QC program will not interfere with the administrative processes of SESAs, since the QC program methodology simply verifies the degree to which SESAs are applying their own State laws and official operational procedures. Thus, it will yield a great deal of information which will assist SESA managers in operating the UI program or assessing the need to revise their own UI law and policies.

One commenter requested a delay of the implementation of the QC program, originally limited to the audit of benefit payments, until other elements of UI administration, notably denials and revenue collections, can be included. After a thorough review of the QC program, a decision was made to proceed with the revised QC program. As described in UIPL No. 4-86, which presented the aforementioned consensus principles as Departmental policy, the revised QC program was implemented voluntarily in March 1986. Such implementation was called for in consensus principle number one. Consistent with consensus principle number two, the Core QC program will be expanded to include the investigation of claims that have been denied and employer revenue collection activities. The QC denials pilot was launched in five States in October 1986 and Revenue QC is currently being designed.

Two commenters contended that QC should be designed to improve quality through corrective action rather than to be a longitudinal research project which provides for statistics and data compilation. The Department concurs that the objective of the QC program is to improve program operations. Any longitudinal research will be dealt with separately.

One commenter stated that the QC program should easily meet the definition of a "major rule" as outlined in the published proposal. Executive Order 12291 on Federal Regulations defines the requirements for classification as a "major rule". As stated in the preamble of the proposed rule and repeated below, this rule is not classified as a "major rule" because it is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Other Comments Which Are Not Applicable to the Regulation

Individuals or groups who made the following comments will receive direct responses from the Department since they do not apply to the regulation:

One commenter noted language in the QC State Operations Handbook which required a log-in account to be established on the SESA mainframe computer for the sole purpose of

allowing data file transfer from the SESA computer to the QC microcomputer. This assumes a QC-to-mainframe link. This commenter believes that the Secretary does not have the authority to mandate such internal operations.

Another commenter was opposed to telephone transmission of QC data between State and National Office during nonworking hours.

One commenter suggested that local office managers' comments be obtained whenever mispayments are detected in a QC investigation.

Four commenters suggested establishment of a National Clearinghouse on Corrective Strategies for the purpose of exchanging ideas and experiences under the QC program.

Another commenter suggested that State staff need more training on interpreting QC data.

Untimely Comments

As noted above, a number of comments were received after the comment period had ended. While these comments are not addressed specifically in this document, the comments were examined, and most were found to present nothing of substantial import not addressed in the timely comments discussed above. Those individuals or groups which presented additional issues or concerns will receive direct responses from the Department.

Technical and Conforming Changes

In addition to the changes noted above, other technical and conforming changes have been made to improve the accuracy and completeness of the regulation.

Authority

Section 302(a), SSA, (42 U.S.C. section 502(a)) requires the Secretary of Labor to certify payment of granted funds to each State in:

... such amounts as the Secretary of Labor determines to be necessary ... for the proper and efficient administration of ... the State's unemployment compensation law.

Section 303(a)(1), stipulates that the Secretary shall make no certification for payment of granted funds unless he finds the State law includes provision for:

Such methods of administration ... as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

The rule interprets section 303(a)(1) to require that States administer a QC program in accordance with Federal requirements and, therefore, QC is a

condition for certification of granted funds by the Secretary.

Under section 303(a)(6), SSA, the Secretary has authority to require States to make reports. Under this section, the Secretary has the authority to require the States to make reports concerning their implementation and operation of the QC program.

Classification—Executive Order 12291

The rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act

The Department has complied with the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35: Approval of recordkeeping requirements at §§ 602.21(c)(2), 602.21(e), and 602.21(f) are under OMB control number 1205-0245.

Regulatory Flexibility Act

This rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b). This rule implements an internal QC program, and has no significant economic impact on any small entities. The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Catalog of Federal Domestic Assistance

This program is listed in the *Catalog of Federal Domestic Assistance* at number 17.225, Unemployment Insurance.

List of Subjects in 20 CFR Part 602

Labor, Unemployment compensation, Reporting and recordkeeping requirements.

Words of Issuance

For the reasons set out in the preamble, Part 602 is added to Title 20, Chapter V, of the Code of Federal Regulations to read as set forth below.

Signed at Washington, DC, on August 27, 1987.

William E. Brock,
Secretary of Labor.

PART 602—QUALITY CONTROL IN THE FEDERAL-STATE UNEMPLOYMENT INSURANCE SYSTEM

Subpart A—General Provisions

Sec.

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Appendix A To Part 602—Standard For Claim Determinations—Separation Information.

Authority: 42 U.S.C. 1302.

Subpart A—General Provisions

§ 602.1 Purpose.

The purpose of this part is to prescribe a Quality Control (QC) program for the Federal-State unemployment insurance (UI) system, which is applicable to the State UI programs and the Federal unemployment benefit and allowance programs administered by the State Employment Security Agencies (SESA) under agreements between the States and the Secretary of Labor (Secretary). QC will be a major tool to assess the timeliness and accuracy of State administration of the UI program. It is designed to identify errors in claims processes and revenue collections (including payments in lieu of contributions and Extended Unemployment Compensation Account collections), analyze causes, and support the initiation of corrective action.

§ 602.2 Scope.

This part applies to all State laws approved by the Secretary under the Federal Unemployment Tax Act (section

3304 of the Internal Revenue Code of 1954, 26 U.S.C. section 3304), to the administration of the State laws, and to any Federal unemployment benefit and allowance program administered by the SESAs under agreements between the States and the Secretary. QC is a requirement for all States, initially being applicable to the largest permanently authorized programs (regular UI including Combined-Wage-Claims) and federally-funded programs (Unemployment Compensation for Ex-Servicemen and Unemployment Compensation for Federal Employees). Other elements of the QC program (e.g., interstate, extended benefit programs, benefit denials, and revenue collections) will be phased in under a schedule determined by the Department in consultation with State agencies.

Subpart B—Federal Requirements

§ 602.10 Federal law requirements.

(a) Section 303(a)(1) of the Social Security Act (SSA), 42 U.S.C. 503(a)(1), requires that a State law include provision for:

Such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

(b) Section 303(a)(6), SSA, 42 U.S.C. 505(a)(6), requires that a State law include provision for:

The making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports.

(c) Section 303(b), SSA, 42 U.S.C. 503(b), provides in part that:

Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(2) a failure to comply substantially with any provision specified in subsection (a); the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such denial or failure to comply. Until he is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State

(d) Certification of payment of granted funds to a State is withheld only when the Secretary finds, after reasonable notice and opportunity for hearing to the State agency—

(1) That any provision required by section 303(a) of the Social Security Act is no longer

included in the State unemployment compensation law; or

(2) That in the administration of the State unemployment compensation law there has been a failure to comply substantially with any required provision of such law.

§ 602.11 Secretary's interpretation.

(a) The Secretary interprets section 303(a)(1), SSA, to require that a State law provide for such methods of administration as will reasonably ensure the prompt and full payment of unemployment benefits to eligible claimants, and collection and handling of income for the State unemployment fund (particularly taxes and reimbursements), with the greatest accuracy feasible.

(b) The Secretary interprets sections 303(a)(1) and 303(a)(6), SSA, to authorize the Department of Labor to prescribe standard definitions, methods and procedures, and reporting requirements for the QC program and to ensure accuracy and verification of QC findings.

(c) The Secretary interprets section 303(b)(2), SSA to require that, in the administration of a State law, there shall be substantial compliance with the provisions required by sections 303(a)(1) and (6). Further, conformity of the State law with those requirements is required by section 303(a) and § 601.5(a) of this chapter.

(d) To satisfy the requirements of sections 303(a)(1) and (6), a State law must contain a provision requiring, or which is construed to require, the establishment and maintenance of a QC program in accordance with the requirements of this part. The establishment and maintenance of such a QC program in accordance with this part shall not require any change in State law concerning authority to undertake redeterminations of claims or liabilities or the finality of any determination, redetermination or decision.

Subpart C—State Responsibilities

§ 602.20 Organization.

Each State shall establish a QC unit independent of, and not accountable to, any unit performing functions subject to evaluation by the QC unit. The organizational location of this unit shall be positioned to maximize its objectivity, to facilitate its access to information necessary to carry out its responsibilities, and to minimize organizational conflict of interest.

§ 602.21 Standard methods and procedures.

Each State shall:

(a) Perform the requirements of this section in accordance with instructions issued by the Department, pursuant to § 602.30(a) of this part, to ensure standardization of methods and procedures in a manner consistent with this part;

(b) Select representative samples for QC study of at least a minimum size specified by the Department to ensure statistical validity (for benefit payments, a minimum of 400 cases of weeks paid per State per year);

(c) Complete prompt and in-depth case investigations to determine the degree of accuracy and timeliness in the administration of the State UI law and Federal programs with respect to benefit determinations, benefit payments, and revenue collections; and conduct other measurements and studies necessary or appropriate for carrying out the purposes of this part; and in conducting investigations each State shall:

(1) Inform claimants in writing that the information obtained from a QC investigation may affect their eligibility for benefits and inform employers in writing that the information obtained from a QC investigation of revenue may affect their tax liability,

(2) Use a questionnaire, prescribed by the Department, which is designed to obtain such data as the Department deems necessary for the operation of the QC program; require completion of the questionnaire by claimants in accordance with the eligibility and reporting authority under State law,

(3) Collect data identified by the Department as necessary for the operation of the QC program; however, the collection of demographic data will be limited to those data which relate to an individual's eligibility for UI benefits and necessary to conduct proportions tests to validate the selection of representative samples (the demographic data elements necessary to conduct proportions tests are claimants' date of birth, sex, and ethnic classification); and

(4) Conclude all findings of inaccuracy as detected through QC investigations with appropriate official actions, in accordance with the applicable State and Federal laws; make any determinations with respect to individual benefit claims in accordance with the Secretary's "Standard for Claim Determinations—Separation Information" in the *Employment Security Manual*, Part V, sections 6010–6015 (Appendix A of this part);

(d) Classify benefit case findings resulting from QC investigations as:

(1) Proper payments, underpayments, or overpayments in benefit payment cases, or

(2) Proper denials or underpayments in benefit denial cases;

(e) Make and maintain records pertaining to the QC program, and make all such records available in a timely manner for inspection, examination, and audit by such Federal officials as the Secretary may designate or as may be required or authorized by law;

(f) Furnish information and reports to the Department, including weekly transmissions of case data entered into the automated QC system and annual reports, without, in any manner, identifying individuals to whom such data pertain; and

(g) Release the results of the QC program at the same time each year, providing calendar year results using a standardized format to present the data as prescribed by the Department; States will have the opportunity to release this information prior to any release by the Department.

(Approved by the Office of Management and Budget under Control Number 1205-0245)

§ 602.22 Exceptions.

If the Department determines that the QC program, or any constituent part of the QC program, is not necessary for the proper and efficient administration of a State law or in the Department's view is not cost effective, the Department shall use established procedures to advise the State that it is partially or totally excepted from the specified requirements of this part. Any determination under this section shall be made only after consultations with the State agency.

Subpart D—Federal Responsibilities

§ 602.30 Management.

(a) The Department shall establish required methods and procedures (as specified in § 602.21 of this part); and provide technical assistance as needed on the QC process.

(b) The Department shall consider and explore alternatives to the prescribed sampling, study, recordkeeping, and reporting methodologies. This shall include, but not be limited to, testing the obtaining of information needed for QC by telephone and mail rather than in face-to-face interviews.

(c) The Department shall maintain a computerized data base of QC case data which is transmitted to the Department under § 602.21, which will be combined with other data for statistical and other analysis such as assessing the impact of economic cycles, funding levels, and

workload levels on program accuracy and timeliness.

§ 602.31 Oversight.

The Department shall review QC operational procedures and samples, and validate QC methodology to ensure uniformity in the administration of the QC program and to ensure compliance with the requirements of this part. The Department shall, for purposes of determining eligibility for grants described in § 602.40, annually review the adequacy of the administration of a State's QC program.

Subpart E—Quality Control Grants to States

§ 602.40 Funding.

(a) The Department shall use established procedures to notify States of the availability of funds for the operation of QC programs in accordance with this part.

(b) The Department may allocate additional resources, if available, to States for analysis of data generated by the QC program, to increase the number of claims sampled in areas where more information is needed, for pilot studies for the purpose of expanding the QC program, and for corrective action.

§ 602.41 Proper expenditure of Quality Control granted funds.

The Secretary may, after reasonable notice and opportunity for hearing to the State agency, take exception to and require repayment of an expenditure for the operation of a QC program if it is found by the Secretary that such expenditure is not necessary for the proper and efficient administration of the QC program in the State. See Actions 303(a)(8), 303(a)(9) and 303(b)(2), SSA, and 20 CFR 601.5. For purposes of this section, an expenditure will be found not necessary for proper and efficient administration if such expenditure fails to comply with the requirements of Subpart C of this part.

§ 602.42 Effect of failure to implement Quality Control program.

Any State which the Secretary finds, after reasonable notice and opportunity for hearing, has not implemented or maintained a QC program in accordance with this part will not be eligible for any grants under Title III of the Social Security Act until such time as the Secretary is satisfied that there is no longer any failure to conform or to comply substantially with any provision specified in this part. See sections 303(a)(1), 303(a)(6), and 303(b)(2), SSA, and 20 CFR 601.5.

§ 602.43 No incentives or sanctions based on specific error rates.

Neither sanctions nor funding incentives shall be used by the Department to influence the achievement of specified error rates in State UI programs.

Appendix A to Part 602—Standard for Claim Determinations—Separation Information

Employment Security Manual (Part V, Sections 6010-6015)

6010 *Federal Law Requirements.* Section 303(a)(1) of the Social Security Act requires that a State law include provision for:

"Such methods of administration . . . as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

Section 303(a)(3) of the Social Security Act requires that a State law include provision for:

"Opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied."

Section 3304(a)(4) of the Federal Unemployment Tax Act and section 303(a)(5) of the Social Security Act require that a State law include provision for:

"Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation."

Section 3306(h) of the Federal Unemployment Tax Act defines "compensation" as "cash benefits payable to individuals with respect to their unemployment."

6011 *Secretary's Interpretation of Federal Law Requirements.* The Secretary interprets the above sections to require that a State law include provisions which will insure that:

A. Individuals who may be entitled to unemployment compensation are furnished such information as will reasonably afford them an opportunity to know, establish, and protect their rights under the unemployment compensation law of such State, and

B. The State agency obtains and records in time for the prompt determination and review of benefit claims such information as will reasonably insure the payment of benefits to individuals to whom benefits are due.

6012 *Criteria for Review of State Law Conformity with Federal Requirements:*

In determining the conformity of a State law with the above requirements of the Federal Unemployment Tax Act and the Social Security Act as interpreted by the Secretary, the following criteria will be applied:

A. Is it required that individuals who may be entitled to unemployment compensation be furnished such information of their potential rights to benefits, including the manner and places of filing claims, the reasons for determinations, and their rights of appeal, as will insure them a reasonable opportunity to know, establish, and protect their rights under the law of the State?

B. Is the State agency required to obtain, in time for prompt determination of rights to benefits such information as will reasonably

insure the payment of benefits to individuals to whom benefits are due?

C. Is the State agency required to keep records of the facts considered in reaching determinations of rights to benefits?

6013 Claim Determinations Requirements Designed To Meet Department of Labor Criteria:

A. Investigation of claims. The State agency is required to obtain promptly and prior to a determination of an individual's right to benefits, such facts pertaining thereto as will be sufficient reasonably to insure the payment of benefits when due.

This requirement embraces five separate elements:

1. It is the responsibility of the agency to take the initiative in the discovery of information. This responsibility may not be passed on to the claimant or the employer. In addition to the agency's own records, this information may be obtained from the worker, the employer, or other sources. If the information obtained in the first instance discloses no essential disagreement and provides a sufficient basis for a fair determination, no further investigation is necessary. If the information obtained from other sources differs essentially from that furnished by the claimant, the agency, in order to meet its responsibility, is required to inform the claimant of such information from other sources and to afford the claimant an opportunity to furnish any further facts he may have.

2. Evidentiary facts must be obtained as distinguished from ultimate facts or conclusions. That a worker was discharged for misconduct is an ultimate fact or conclusion; that he destroyed a machine upon which he was working is a primary or evidentiary fact, and the sort of fact that the requirement refers to.

3. The information obtained must be sufficient reasonably to insure the payment of benefits when due. In general, the investigation made by the agency must be complete enough to provide information upon which the agency may act with reasonable assurance that its decision is consistent with the unemployment compensation law. On the other hand, the investigation should not be so exhaustive and time-consuming as unduly to delay the payment of benefits and to result in excessive costs.

4. Information must be obtained promptly so that the payment of benefits is not unduly delayed.

5. If the State agency requires any particular evidence from the worker, it must give him a reasonable opportunity to obtain such evidence.

B. Recording of facts. The agency must keep a written record of the facts considered in reaching its determinations.

C. Determination notices.

1. The agency must give each claimant a written notice of:

- a. Any monetary determination with respect to his benefit year;
- b. Any determination with respect to purging a disqualification if, under the State law, a condition or qualification must be satisfied with respect to each week of disqualification; but in lieu of giving written notice of each determination for each week in

which it is determined that the claimant has met the requirements for purging, the agency may inform the claimant that he has purged the disqualification for a week by notation of his applicant identification card or otherwise in writing.

c. Any other determination which adversely affects¹ his rights to benefits, except that written notice of determination need not be given with respect to:

(1) A week in a benefit year for which the claimant's weekly benefit amount is reduced in whole or in part by earnings if, the first time in the benefit year that there is such a reduction, he is required to be furnished a booklet or leaflet containing the information set forth below in paragraph 2f(1). However, a written notice of determination is required if: (a) there is a dispute concerning the reduction with respect to any week (e.g., as to the amount computed as the appropriate reduction, etc.); or (b) there is a change in the State law (or in the application thereof) affecting the reduction; or

(2) Any week in a benefit year subsequent to the first week in such benefit year in which benefits were denied, or reduced in whole or in part for reasons other than earnings, if denial or reduction for such subsequent week is based on the same reason and the same facts as for the first week, and if written notice of determination is required to be given to the claimant with respect to such first week, and with such notice of determination, he is required to be given a booklet or pamphlet containing the information set forth below in paragraphs 2f(2) and 2h. However, a written notice of determination is required if: (a) there is a dispute concerning the denial or reduction of benefits with respect to such week; or (b) there is a change in the State law (or in the application thereof) affecting the denial or reduction; or (c) there is a change in the amount of the reduction except as to the balance covered by the last reduction in a series of reductions.

Note.—This procedure may be applied to determinations made with respect to any subsequent weeks for the same reason and on the basis of the same facts: (a) that claimant is unable to work, unavailable for work, or is disqualified under the labor dispute provision; and (b) reducing claimant's weekly benefit amount because of income other than earnings or offset by reason of overpayment.

2. The agency must include in written notices of determinations furnished to claimants sufficient information to enable

¹ A determination "adversely affects" claimant's right to benefits if it (1) results in a denial to him of benefits (including a cancellation of benefits or wage credits or any reduction in whole or in part below the weekly or maximum amount established by his monetary determination) for any week or other period; or (2) denies credit for a waiting week; or (3) applies any disqualification or penalty; or (4) determines that he has not satisfied a condition of eligibility, requalification for benefits, or purging a disqualification; or (5) determines that an overpayment has been made or orders repayment or recoupment of any sum paid to him; or (6) applies a previously determined overpayment, penalty, or order for repayment or recoupment; or (7) in any other way denies claimant a right to benefits under the State law.

them to understand the determinations, the reasons therefor, and their rights to protest, request reconsideration, or appeal.

The written notice of monetary determination must contain the information specified in the following items (except h) unless an item is specifically not applicable. A written notice of any other determination must contain the information specified in as many of the following items as are necessary to enable the claimant to understand the determination and to inform him of his appeal rights. Information specifically applicable to the individual claimant must be contained in the written notice of determination. Information of general application such as (but not limited to) the explanation of benefits for partial unemployment, information as to deductions, seasonality factors, and information as to the manner and place of taking an appeal, extension of the appeal period, and where to obtain information and assistance may be contained in a booklet or leaflet which is given the claimant with his monetary determination.

a. **Base period wages.** The statement concerning base-period wages must be in sufficient detail to show the basis of computation of eligibility and weekly and maximum benefit amounts. (If maximum benefits are allowed, it may not be necessary to show details of earnings.)

b. **Employer name.** The name of the employer who reported the wages is necessary so that the worker may check the wage transcript and know whether it is correct. If the worker is given only the employer number, he may not be able to check the accuracy of the wage transcript.

c. **Explanation of benefit formula—weekly and maximum benefit amounts.** Sufficient information must be given the worker so that he will understand how his weekly benefit amount, including allowances for dependents, and his maximum benefit amount were figured. If benefits are computed by means of a table contained in the law, the table must be furnished with the notice of determination whether benefits are granted or denied.

The written notice of determination must show clearly the weekly benefit amount and the maximum potential benefits to which the claimant is entitled.

The notice to a claimant found ineligible by reason of insufficient earnings in the base period must inform him clearly of the reason for ineligibility. An explanation of the benefit formula contained in a booklet or pamphlet should be given to each claimant at or prior to the time he receives written notice of a monetary determination.

d. **Benefit year.** An explanation of what is meant by the benefit year and identification of the claimant's benefit year must be included in the notice of determination.

e. **Information as to benefits for partial unemployment.** There must be included either in the written notice of determination or in a booklet or pamphlet accompanying the notice an explanation of the claimant's rights to partial benefits for any week with respect to which he is working less than his normal customary full-time workweek because of

lack of work and for which he earns less than his weekly benefit amount or weekly benefit amount plus earnings, whichever is provided by the State law. If the explanation is contained in the notice of determination, reference to the item in the notice in which his weekly benefit amount is entered should be made.

f. Deductions from weekly benefits.

(1) *Earnings.* Although written notice of determinations deducting earnings from a claimant's weekly benefit amount is generally not required (see paragraph 1 c (1) above), where written notice of determination is required (or given) it shall set forth the amount of earnings, the method of computing the deduction in sufficient detail to enable the claimant to verify the accuracy of the deduction, and his right to protest, request redetermination, and appeal. Where a written notice of determination is given to the claimant because there has been a change in the State law or in the application of the law, an explanation of the change shall be included.

Where claimant is not required to receive a written notice of determination, he must be given a booklet or pamphlet the first time in his benefit year that there is a deduction for earnings which shall include the following information:

(a) The method of computing deductions for earnings in sufficient detail to enable the claimant to verify the accuracy of the deduction;

(b) That he will not automatically be given a written notice of determination for a week with respect to which there is a deduction for earnings (unless there is a dispute concerning the reduction with respect to a week or there has been a change in the State law or in the application of the law affecting the deduction) but that he may obtain such a written notice upon request; and

(c) A clear statement of his right to protest, request a redetermination, and appeal from any determination deducting earnings from his weekly benefit amount even though he does not automatically receive a written notice of determination; and if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

(2) *Other deductions.*

(a) A written notice of determination is required with respect to the first week in claimant's benefit year in which there is a reduction from his benefits for a reason other than earnings. This notice must describe the deduction made from claimant's weekly benefit amount, the reason for the deduction, the method of computing it in sufficient detail to enable him to verify the accuracy of such deduction, and his right to protest, request redetermination, or appeal.

(b) A written notice of determination is not required for subsequent weeks that a deduction is made for the same reason and on the basis of the same facts, if the notice of determination pursuant to (2)(a), or a booklet or pamphlet given him with such notice explains (i) the several kinds of deductions which may be made under the State law (e.g.,

retirement pensions, vacation pay, and overpayments); (ii) the method of computing each kind of deduction in sufficient detail that claimant will be able to verify the accuracy of deductions made from his weekly benefit payments; (iii) any limitation on the amount of any deduction or the time in which any deduction may be made; (iv) that he will not automatically be given a written notice of determination for subsequent weeks with respect to which there is a deduction for the same reason and on the basis of the same facts, but that he may obtain a written notice of determination upon request; (v) his right to protest, request redetermination, or appeal with respect to subsequent weeks for which there is a reduction from his benefits for the same reason, and on the basis of the same facts even though he does not automatically receive a written notice of determination; and (vi) that if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

g. Seasonality factors. If the individual's determination is affected by seasonality factors under the State law, an adequate explanation must be made. General explanation of seasonality factors which may affect determinations for subsequent weeks may be included in a booklet or pamphlet given claimant with his notice of monetary determination.

h. Disqualification or ineligibility. If a disqualification is imposed, or if the claimant is declared ineligible for one or more weeks, he must be given not only a statement of the period of disqualification or ineligibility and the amount of wage-credit reductions, if any, but also an explanation of the reason for the ineligibility or disqualification. This explanation must be sufficiently detailed so that he will understand why he is ineligible or why he has been disqualified, and what he must do in order to requalify for benefits or purge the disqualification. The statement must be individualized to indicate the facts upon which the determination was based, e.g., state, "It is found that you left your work with Blank Company because you were tired of working; the separation was voluntary, and the reason does not constitute good cause," rather than merely the phrase "voluntary quit." Checking a box as to the reason for the disqualification is not a sufficiently detailed explanation. However, this statement of the reason for the disqualification need not be a restatement of all facts considered in arriving at the determination.

i. Appeal rights. The claimant must be given information with respect to his appeal rights.

(1) The following information shall be included in the notice of determination:

(a) A statement that he may appeal or, if the State law requires or permits a protest or redetermination before an appeal, that he may protest or request a redetermination.

(b) The period within which an appeal, protest, or request for redetermination must be filed. The number of days provided by statute must be shown as well as either the beginning date or ending date of the period.

(It is recommended that the ending date of the appeal period be shown, as this is the more understandable of the alternatives.)

(2) The following information must be included either in the notice of determination or in separate informational material referred to in the notice:

(a) The manner in which the appeal, protest, or request for redetermination must be filed, e.g., by signed letter, written statement, or on a prescribed form, and the place or places to which the appeal, protest, or request for redetermination may be mailed or hand-delivered.

(b) An explanation of any circumstances (such as nonworkdays, good cause, etc.) which will extend the period for the appeal, protest, or request for redetermination beyond the date stated or identified in the notice of determination.

(c) That any further information claimant may need or desire can be obtained together with assistance in filing his appeal, protest, or request for redetermination from the local office.

If the information is given in separate material, the notice of determination would adequately refer to such material if it said, for example, "For other information about your (appeal), (protest), (redetermination) rights, see pages ____ to ____ of the ____ (name of pamphlet or booklet) heretofore furnished to you."

6014 Separation Information Requirements Designed To Meet Department of Labor Criteria:

A. Information to agency. Where workers are separated, employers are required to furnish the agency promptly, either upon agency request or upon such separation, a notice describing the reasons for and the circumstances of the separation and any additional information which might affect a claimant's right to benefits. Where workers are working less than full time, employers are required to furnish the agency promptly, upon agency request, information concerning a claimant's hours of work and his wages during the claim periods involved, and other facts which might affect a claimant's eligibility for benefits during such periods.

When workers are separated and the notices are obtained on a request basis, or when workers are working less than full time and the agency requests information, it is essential to the prompt processing of claims that the request be sent out promptly after the claim is filed and the employer be given a specific period within which to return the notice, preferably within 2 working days.

When workers are separated and notices are obtained upon separation, it is essential that the employer be required to send the notice to the agency with sufficient promptness to insure that, if a claim is filed, it may be processed promptly. Normally, it is desirable that such a notice be sent to the central office of the agency, since the employer may not know in which local office the workers will file his claim. The usual procedure is for the employer to give the worker a copy of the notice sent by the employer to the agency.

B. Information to worker.

1. Information required to be given.

Employers are required to give their employees information and instructions concerning the employees' potential rights to benefits and concerning registration for work and filing claims for benefits.

The information furnished to employees under such a requirement need not be elaborate; it need only be adequate to insure that the worker who is separated or who is working less than full time knows he is potentially eligible for benefits and is informed as to what he is to do or where he is to go to file his claim and register for work. When he files his claim, he can obtain more detailed information.

In States that do not require employers to furnish periodically to the State agency detailed reports of the wages paid to their employees, each employer is required to furnish to his employees information as to (a) the name under which he is registered by the State agency, (b) the address where he maintains his payroll records, and (c) the workers' need for this information if and when they file claims for benefits.

2. Methods for giving information. The information and instructions required above may be given in any of the following ways:

a. *Posters prominently displayed in the employer's establishment.* The State agency should supply employers with a sufficient number of posters for distribution throughout their places of business and should see that the posters are conspicuously displayed at all times.

b. *Leaflets.* Leaflets distributed either periodically or at the time of separation or reduction of hours. The State agency should supply employers with a sufficient number of leaflets.

c. *Individual notices.* Individual notices given to each employee at the time of separation or reduction in hours.

It is recommended that the State agency's publicity program be used to supplement the employer-information requirements. Such a program should stress the availability and location of claim-filing offices and the importance of visiting those offices whenever the worker is unemployed, wishes to apply for benefits, and to seek a job.

6015 Evaluation of Alternative State Provisions with Respect to Claim

Determinations and Separation Information. If the State law provisions do not conform to the suggested requirements set forth in sections 6013 and 6014, but the State law contains alternative provisions, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effects of the alternative provisions. If the Administrator of the Bureau concludes that the alternative provisions satisfy the criteria in section 6012, he will so notify the State agency. If the Administrator of the Bureau does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy the criteria in section 6012, the State agency will be so notified. If the Secretary concludes that there is a question as to whether the alternative provisions satisfy the criteria, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, section 601.5.

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